

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>BRANDON MOODY,</b>	:	
<b>Plaintiff,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	
	:	
<b>JUDE CONROY, et al.,</b>	:	<b>No. 10-2525</b>
<b>Defendants</b>	:	

**MEMORANDUM**

**Schiller, J.**

**July 24, 2017**

Seven years ago, Brandon Moody sued Detective John Verrechio, Detective Thomas Gaul, Assistant District Attorney Jude Conroy, and the City of Philadelphia (collectively, “Defendants”) for alleged constitutional violations. Defendants filed motions to dismiss on statute of limitations grounds, which the Court granted, and Moody appealed. In February, the Third Circuit remanded this case to determine whether Moody’s lawsuit was timely filed under the prison mailbox rule. Defendants now argue that even under the prison mailbox rule, Moody commenced his lawsuit on May 21, 2010—one day outside the statute of limitations. The Court agrees. For the reasons set forth below, the Court again grants Defendants’ motions to dismiss.

**I. BACKGROUND**

Moody alleged that on May 14, 2008, while housed as a pre-trial detainee at Curran Fromhold Correctional Facility, a sergeant and three correctional officers entered his cell and seized his mail. (Second Am. Compl. ¶ 10.) The mail included privileged correspondence between Moody and his attorney, and other papers relating to Moody’s legal defense. (*Id.* ¶¶ 10–11.) The officers claimed the seizure was “pursuant to a court order from the District Attorney’s Office.” (*Id.* ¶ 10.) Moody argued that the court order was forged. (*Id.* ¶ 14.) He further alleged

that the confiscation of his personal mail was commenced by Verrechio on Gaul's behalf, and that Verrechio subsequently provided the mail to Conroy. (*Id.* ¶¶ 25–26.) Moody sued Defendants under 42 U.S.C. §§ 1983 and 1985, claiming they violated his rights under the First, Fourth, Sixth, and Fourteenth Amendments. (*Id.* 1)

Defendants filed motions to dismiss in September 2015. On October 30, 2015, the Court granted Defendants' motions to dismiss on statute of limitations grounds. The Court concluded that the two-year statute of limitations period commenced on May 20, 2008, but that Moody had filed his in forma pauperis motion on May 24, 2010, after the statute of limitations had run. (Mem. Op. 4–5, ECF No. 60.)<sup>1</sup>

Moody subsequently filed a motion for reconsideration, arguing that the Court failed to properly account for the prison mailbox rule. (Pl.'s Mot. Recons. 13.) Moody claimed in his motion that “the accurate date that should be assessed as the date he filed the IFP request should be the date it was signed, but no later than the date he handed the documents over to be mailed which was documented as of May 21, 2010.” (*Id.*) He also provided a cash slip form and an inmate account statement as evidence supporting his contention. (*Id.* Exs. C (cash slip), D (account statement).) The handwritten cash slip form requested that officials “deduct the required funds” necessary to mail 10 envelopes, and was dated May 21, 2010. (*Id.* Ex. C.) The inmate account statement listed various transactions, and Moody noted the two postage expenses incurred on May 21, 2010. (*Id.* Ex. D.) The Court denied Moody's motion for reconsideration and he appealed.

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<sup>1</sup> For the purpose of the statute of limitations, filing an IFP motion commences the lawsuit. *See, e.g., Howard v. Masterson*, Civ. A. No. 06-5632, 2009 WL 5184476, at \*1 (E.D. Pa. Dec. 21, 2009).

The Third Circuit determined that at the motion to dismiss stage, Moody had adequately pled facts sufficient to toll the statute of limitations until May 20, 2010. *Moody v. Conroy*, Civ. A. No. 16-1018, 2017 WL 775823, at \*2–3 (3d Cir. Feb. 28, 2017). Because Moody provided a certificate of service dated May 20, 2010, with his initial IFP filing, the court stated that Moody’s action may have fallen within the statute of limitations. *Id.* at \*3. The Third Circuit remanded the case to this Court to decide whether Moody’s action was timely filed under the prison mailbox rule. *Id.*

## **II. DISCUSSION**

Under the prison mailbox rule, a pro se inmate files a document at the moment he delivers it to the relevant prison authorities to be sent to the court. *Houston v. Lack*, 487 U.S. 266, 275–76 (1988). The date of delivery to prison authorities is used because after that moment, the inmate loses any control over the document and has no further ability to ensure that it timely reaches the district court. *Id.* at 271–72.

In “the absence of contrary evidence,” the date of delivery is often assumed to be the date that the document was signed by the inmate. *U.S. v. Thomas*, Civ. A. No. 12-282, 2015 WL 2126911, at \*1 n.1 (E.D. Pa. May 5, 2015); *e.g.*, *Butler v. Walsh*, 846 F. Supp. 2d 324, 327 n.3 (E.D. Pa. 2012) (same). But when contrary evidence exists—such as cash slips or account statements—courts will use the date indicated by those records to determine when the inmate delivered the documents. *See, e.g.*, *Suny v. Pennsylvania*, Civ. A. No. 12-1469, 2014 WL 772439, at \*10 (E.D. Pa. Feb. 27, 2014) (finding a cash slip to be “sufficient proof that Petitioner gave his PCRA petition to prison authorities on October 18, 2007”); *Nichols v. Coleman*, Civ. A. No. 08-2445, 2008 WL 7631529, at \*2 n.4 (E.D. Pa. Dec. 4, 2008) (holding that although the

date of petitioner's signature was May 19, 2008, the date of delivery of the Petition for Writ of Habeas Corpus to prison authorities was May 21, 2008, which was "the date of the signature of the prison accounting official and the date on the inmate account balance sheet").

Moody argues in his supplemental briefing that May 19, 2010, should be the operative date of filing because that is when he had all the requisite documents completed. (Pl.'s Suppl. Br. 2, ECF No. 81.) And Moody's IFP petition does include a certificate of service dated May 20, 2010. (Pl.'s Proof of Service.) But Moody himself has provided contrary evidence that his IFP motion was delivered to prison authorities on May 21, 2010. Moody attached a copied version of a cash slip form, dated May 21, 2010, in which he asks funds to be withdrawn to pay for the mailing of 10 envelopes. (Pl.'s Mot. Recons. 13, Ex. C.) Moody also attached an inmate account statement and highlighted "postage" transactions dated May 21, 2010. (*Id.* Ex. D.) Most importantly, Moody conceded in his motion for reconsideration that he provided the documents to the prison authorities on May 21, 2010. (*Id.* 13.)

These three pieces of contrary evidence, proffered by Moody himself, demonstrate that Moody delivered his IFP motion to the prison authorities for mailing on May 21, 2010. As a result, the Court finds that Moody filed his IFP motion one day after the statute of limitations had run. Accordingly, the Court will again grant Defendants' motions to dismiss.

### **III. CONCLUSION**

For the foregoing reasons, the Court grants Defendants' motions to dismiss. An Order consistent with this Memorandum will be docketed separately.

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<b>Plaintiff,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	
	:	
<b>JUDE CONROY, et al.,</b>	:	<b>No. 10-2525</b>
<b>Defendants.</b>	:	

**ORDER**

**AND NOW**, this **24<sup>th</sup>** day of **July, 2017**, following the Mandate of the U.S. Court of Appeals for the Third Circuit (Document No. 77), upon consideration of the parties' supplemental briefs, and for the reasons provided in the Court's Memorandum dated July 24, 2017, it is hereby **ORDERED** that:

1. Defendants' motions to dismiss (Document Nos. 49, 50) are **GRANTED**.
2. The Clerk of Court is directed to close this case.

**BY THE COURT:**

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**Berle M. Schiller, J.**